



[BILLING CODE 6760-01-P]

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Parts 1653

**Legal Process for the Enforcement of a Tax Levy or Criminal
Restitution Order Against a Participant Account.**

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Final rule.

SUMMARY: The Federal Retirement Thrift Investment Board (Agency) proposes to amend its regulations to explain the Board's procedures for responding to tax levies and criminal restitution orders that comply with the statutory requirements.

DATES: This rule is effective on [Please insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Erin Graham at 202-942-1605.

SUPPLEMENTARY INFORMATION: The Agency administers the Thrift Savings Plan (TSP), which was established by the Federal Employees' Retirement System Act of 1986 (FERSA), Public Law 99-335, 100 Stat. 514. The TSP provisions of FERSA are codified, as amended, largely at 5 U.S.C. 8351 and 8401-79. The TSP is a tax-deferred retirement savings plan for Federal civilian employees and members of the uniformed services. The TSP is similar to cash or deferred arrangements established for

private-sector employees under section 401(k) of the Internal Revenue Code (26 U.S.C. 401(k)).

**Legal Process for the Enforcement of Internal Revenue Service
Levies or Restitution Pursuant to the Mandatory Victims
Restitution Act**

The TSP's governing statute includes an anti-alienation provision that protects funds from execution, levy, attachment, garnishment, or other legal process, except for certain enumerated exceptions that, until recently, did not include federal tax levies. On January 14, 2013 the President signed into law P.L. No. 112-267, 126 Stat. 2440 (2013), entitled "To amend title 5, United States Code, to make clear that accounts in the Thrift Savings Fund are subject to certain Federal tax levies." The legislation amends 5 U.S.C. 8437(e)(3) to state, "Moneys due or payable from the Thrift Savings Fund to any individual and, in the case of an individual who is an employee or Member (or former employee or Member), the balance in the account of the employee or Member (or former employee or Member) . . . shall be subject to a Federal tax levy under section 6331 of the Internal Revenue Code of 1986." In enacting the amendment to 5 U.S.C. 8437, Congress placed IRS levies in a small company of exceptions which include child support obligations, alimony obligations, and restitution pursuant to the Mandatory Victims Restitution Act (MVRA). Congress has deemed these instances as

the only permissible reasons for funds to be diverted from a participant's account. The Agency has previously promulgated regulations governing the payments from accounts in each of these situations. The regulations for levies and criminal restitution will be similar to those previously issued.

On June 26, 2014, the Agency published a proposal to amend its regulations to explain the Agency's procedures for responding to legal process for the enforcement of participant's levy or criminal restitution order. The Agency received one comment to the proposed regulation, which expressed opposition to allowing the IRS to levy Federal Thrift Savings Plan accounts. However, the Thrift Savings Plan is required by law to honor IRS levies and criminal restitution orders, and the regulations only explain the payout process. Therefore, the Agency is publishing the proposed rule as final without substantive modification.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities. This regulation will affect Federal employees, members of the uniformed services who participate in the Thrift Savings Plan, and their beneficiaries. The TSP is a Federal defined contribution retirement savings plan created FERSA and is administered by the Agency.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the Paperwork Reduction Act.

Unfunded Mandates Reform Act of 1995

Pursuant to the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 602, 632, 653, 1501-1571, the effects of this regulation on state, local, and tribal governments and the private sector have been assessed. This regulation will not compel the expenditure in any one year of \$100 million or more by state, local, and tribal governments, in the aggregate, or by the private sector. Therefore, a statement under §1532 is not required.

Submission to Congress and the General Accounting Office

Pursuant to 5 U.S.C. 810(a)(1)(A), the Agency submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States before publication of this rule in the Federal Register. This rule is not a major rule as defined at 5 U.S.C. 804(2).

List of Subjects in 5 CFR Part 1653

Taxes, Claims, Government employees, Pensions, Retirement.

Gregory T. Long,

Executive Director, Federal Retirement Thrift Investment Board

For the reasons stated in the preamble, the Agency amends 5 CFR chapter VI as follows:

PART 1653 -- COURT ORDERS AND LEGAL PROCESSES AFFECTING THRIFT SAVINGS PLAN ACCOUNT

1. The authority citation for part 1653 continues to read as follows:

AUTHORITY: 5 U.S.C. 8432d, 8435, 8436(b), 8437(e), 8439(a)(3), 8467, 8474(b)(5), and 8474(c)(1).

2. Subpart D is added to read as follows:

Subpart D - Process for the Enforcement of a Participant's Legal Obligation to Pay a Federal Tax Levy or Criminal Restitution Order

Sec.

1653.31 Definitions.

1653.32 Qualifying Federal tax levy.

1653.33 Qualifying Criminal Restitution Order.

1653.34 Processing Federal tax levies and Criminal Restitution Orders.

1653.35 Calculating entitlement.

1653.36 Payment.

Subpart D - Process for the Enforcement of a Participant's Legal Obligation to Pay a Federal Tax Levy or Criminal Restitution

Order

§ 1653.31 Definitions.

(a) Definitions generally applicable to the Thrift Savings Plan are set forth at 5 CFR 1690.1

(b) As used in this subpart:

Criminal Restitution Order means a complete copy of the judgment in a criminal case issued by a federal court ordering restitution for a crime described in 18 U.S.C. 3663A.

Tax levy means a signed form 668-A served by the IRS for the satisfaction of a federal tax debt.

§ 1653.32 Qualifying Federal tax levy.

(a) The TSP will only honor the terms of a tax levy that is qualifying under paragraph (b) of this section.

(b) A tax levy must meet each of the following requirements to be considered qualifying:

(1) The Internal Revenue Service issued the levy.

(2) The levy includes a signature certifying that it attaches to a retirement plan.

(3) The levy requires the TSP to pay a stated dollar amount from a TSP participant's account.

(4) The levy is dated no earlier than thirty (30) days before

receipt.

(5) The levy is issued in the name of the participant only.

(6) The levy expressly refers to the "Thrift Savings Plan" or describes the TSP in such a way that it cannot be confused with other Federal Government retirement benefits or non-Federal retirement benefits.

(c) The following levies will not be considered qualifying:

(1) A levy relating to a TSP account with a zero dollar account balance;

(2) A levy relating to a TSP account that contains only nonvested money, unless the money will become vested within 30 days of the date the TSP receives the order if the participant were to remain in Government service;

(3) A levy requiring the TSP to make a payment at a specified date in the future;

(4) A levy that does not contain a signature certifying that it applies to retirement plans;

(5) A levy requiring a series of payments;

(6) A levy that designates the specific TSP Fund, source of contributions, or balance from which the payment or portions of the payment shall be made.

§ 1653.33 Qualifying Criminal Restitution Order.

(a) The TSP will only honor the terms of a criminal restitution order that is qualifying under paragraph (b) of this section.

(b) A criminal restitution order must meet each of the following requirements to be considered qualifying:

(1) The restitution must be ordered in the sentencing of the participant as required by 18 U.S.C. 3663A and 18 U.S.C. 3664.

(2) The restitution order and accompanying documentation must require the TSP to:

(i) Pay a stated dollar amount from a participant's TSP account;
or

(ii) Freeze the participant's TSP account in anticipation of an order to pay from the account.

(c) The following orders will not be considered qualifying:

(1) A restitution order relating to a TSP account with a zero dollar account balance;

(2) A restitution order relating to a TSP account that contains only nonvested money, unless the money will become vested within 30 days of the date the TSP receives the order if the participant were to remain in Government service;

(3) A restitution order requiring the TSP to make a payment in the future;

(4) A forfeiture order related to a monetary garnishment of

funds;

(5) A restitution order requiring a series of payments;

(6) A restitution order that designates the specific TSP Fund, source of contributions, or balance from which the payment or portions of the payment shall be made.

§ 1653.34 Processing tax levies and Criminal Restitution Orders.

(a) The payment of tax levies and criminal restitution orders from the TSP is governed solely by the Federal Employees' Retirement Systems Act, 5 U.S.C. chapter 84, and by the terms of this subpart. Although the TSP will honor tax levies or criminal restitution orders properly issued, those entities have no jurisdiction over the TSP and the TSP cannot be made a party to the underlying proceedings.

(b) The TSP will review a tax levy or criminal restitution order to determine whether it is enforceable against the TSP only after it has received a complete copy of the document. Receipt by an employing agency or any other agency of the Government does not constitute receipt by the TSP. Tax levies and criminal restitution orders should be submitted to the TSP record keeper at the current address as provided at <http://www.tsp.gov>. Receipt by the TSP record keeper is considered receipt by the TSP. To be complete, a tax levy or criminal restitution order must meet all the requirements of § 1653.32 or § 1653.33; it

must also provide (or be accompanied by a document that provides):

(1) The participant's TSP account number or Social Security number (SSN); and

(2) The name and mailing address of the payee.

(c) As soon as practicable after the TSP receives a document that purports to be a qualifying tax levy or criminal restitution order, the participant's account will be frozen. After the participant's account is frozen, no withdrawal or loan disbursements will be allowed until the account is unfrozen. All other account activity will be permitted, including contributions, loan repayments, adjustments, contribution allocations and interfund transfers. Once a disbursement from the account is made in accordance with the restitution order or levy, the hold will be removed from the participant's account.

(d) As soon as practicable after receipt of a complete copy of a tax levy or criminal restitution order, the TSP will review it to determine whether it is qualifying as described in § 1653.32 or § 1653.33. The TSP will mail a decision letter to all parties containing the following information:

(1) A determination regarding whether the restitution order or levy is qualifying;

(2) A statement of the applicable statutes and regulations;

(3) An explanation of the effect the restitution order or levy has on the participant's TSP account; and

(4) If the qualifying restitution order or levy requires payment, the letter will provide:

(i) An explanation of how the payment will be calculated and an estimated amount of payment;

(ii) The anticipated date of payment.

(e) The TSP decision letter is final. There is no administrative appeal from the TSP decision.

§ 1653.35 Calculating entitlement.

A levy or criminal restitution order can only require the payment of a specified dollar amount from the TSP. If the restitution order or levy awards a specific dollar amount, the payee's entitlement will be the lesser of:

(a) The dollar amount stated in the levy or restitution order; or

(b) The vested account balance on the date of disbursement, minus any outstanding loan balance.

§ 1653.36 Payment.

(a) Payment pursuant to a qualifying levy or criminal restitution order will be made 30 days after the TSP decision letter.

(b) In no case will payment exceed the participant's calculated entitlement.

(c) The entire amount of a restitution order or levy entitlement must be disbursed at one time. A series of payments will not be made. A payment pursuant to a restitution order or levy extinguishes all rights to any further payment under that order or levy, even if the entire amount of the entitlement cannot be paid. Any further award must be contained in a separate restitution order or levy.

(d) If a participant has funds in more than one type of account, payment will be made from each account in the following order, until the amount of the levy or restitution order is reached:

- (1) Civilian account;
- (2) Uniformed services account;
- (3) Beneficiary participant account.

(e) Payment will be made pro rata from the participant's traditional and Roth balances. The distribution from the traditional balance will be further pro rated between the tax-deferred balance and tax-exempt balance. The payment from the Roth balance will be further pro rated between contributions in the Roth balance and earnings in the Roth balance. In addition, all payments will be distributed pro rata from all TSP Funds in which the participant's account is invested. All pro rated amounts will be based on the balances in each fund or source of

contributions on the day the disbursement is made.

(f) The payment is taxable to the participant and is subject to Federal income tax withholding. The tax withholding will be taken from the payee's entitlement and the gross amount of the payment (i.e., the net payment distributed to the payee plus the amount withheld from the payment for taxes) will be reported to the IRS as income to the participant.

(g) A properly paid levy or restitution order cannot be returned to the TSP.